

This submission is in response to the Official Action dated August 10, 2004. Claims 58, 60, 62-71 and 89-102 are currently pending. Claims 58, 89, 90, 92, 93, 95, 96, and 98 are amended herewith. Claim 102 has been added. Support for these amendments can be found in the specification, page 17, line 28-29. Support for new claim 102 can be found in the specification, page 17, line 25-26. Reconsideration of the above-identified application, in view of the following remarks, is respectfully requested. Each of the Examiner's rejections is discussed below.

Claims 89, 92, 95, and 98 have been rejected as anticipated by U.S. Patent No. 5,681,802 to Fujiwara. The Examiner contends that the liquid skin cleanser of Fujiwara includes a cationic polymer and/or cationic surfactant, a metallic material as a preservative, and, inherently, a moisture-resistant film.

Applicants respectfully traverse. The “metallic materials” in Fujiwara’s compositions, are alkali alkaline earth metals salts of surfactants and preservatives including NaCl, Na sulfonate and potassium sorbate. Antimicrobial activity of these compounds is caused by the anion (i.e., sorbate) and not the metallic component (i.e., potassium). These are distinct from the metallic materials in the currently amended claims, which are limited to antimicrobial metallic materials that are substantially water-insoluble or can be rendered substantially water-insoluble. There is no teaching in Fujiwara to replace the surfactant or preservative in the disclosed cleaning formulation with antimicrobial metallic materials (i.e., silver salt).

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Therefore, applicants respectfully request that the rejection under 35 U.S.C. §102(e) for claims 89, 92, 95, and 98 be withdrawn.

Rejections under 35 U.S.C. §103(a)

Claims 58, 60, 62-71, and 89-101 have been rejected as obvious over WO 95/17152 to Sawan in view of Fujiwara '802 and U.S. Patent No. 5,576,006 to Smith. The Examiner contends that the antimicrobial compound disclosed by Fujiwara, which may include a polymer and a metallic material, would be obvious to combine with the Sawan '152 patent, which teaches cross-linking of PHMB with an organic compound to enhance the final activity, the use of silver salts, and topical use. The Examiner also argues that the '006 patent is "complementary" to Fujiwara and Sawan and provides the state of art for preparing topical PHMB-containing lotions. The Examiner argues that it would have been obvious to combine two compositions taught to be useful for the same purpose and therefore combining the Fujiwara and the Sawan '152 compositions would be obvious.

Applicants respectfully traverse. The Sawan '152 reference does not disclose a topical composition containing silver or any other antimicrobial metallic material. The antimicrobial composition of Sawan '152 is a non-leachably attached to the container, filter, nozzle, or other device that is contacted by a material (such as a topical composition) which is prone to microbial contamination and/or deterioration. Sawan '152 teaches preventing microbial growth without adding preservatives to a topical solution. For example, see pg 27, last para., line 7-8 which states "the sterile eye-care liquid is preservative-free," and page 28, line 6 which states the presence of a preservative would be undesirable. Therefore, when the liquids disclosed or suggested by Sawan '152 are administered to the skin, no antimicrobial activity is provided on the skin because all antimicrobial material remains on the surface of the container.

There is not motivation to combine the non-leachable coating on the container, filter, nozzle, or other device with the topical composition of the present invention. There is no indication that the Sawan metallic material can be administered with a carrier to the skin to provide the skin

with antimicrobial activity. Neither Fujiwara '802 or Smith '006 can be properly combined with Sawan to provide the topical composition comprising an organic polycationic polymer, an antimicrobial metallic material which is substantially water-insoluble or can be rendered substantially water-insoluble, and a carrier.

Therefore, applicants respectfully request that the rejection under 35 U.S.C. §103(a) for claims 58, 60, 62-71, and 89-101 be withdrawn.

Double-Patenting

All claims have been rejected by the Examiner under the judicially created doctrine of obviousness-type double-patenting as being allegedly unpatentable over various claims in commonly-owned U.S. Patents 6,180,584; 6,030,632; 5,869,072; and 5,817,325.

Upon indication of allowable subject matter in the present application, the allowable subject matter not being patentably distinct from the claims of one or more of the above-cited patents, an appropriate terminal disclaimer will be timely filed.

* * *

Therefore, in view of the above remarks, it is earnestly requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining that the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.


Application No. 09/392,842
Amendment dated November 21, 2005
in response to Office Action of May 20, 2005

Docket No.: 05402/100M695-US1

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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